IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12639 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HUSEIN MAJIDSHA DIWAN

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 12639 of 2004

MS Bharatiben RANA for MR ANIL S DAVE for Petitioner

MR HM PRACHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 16/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Surat City, on 21st of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 21st of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration the fact of filing of solitary crime against the petitioner before Mahidhar Police Station on 24th of June, 2004, under the Bombay Prohibition Act. It is alleged that the petitioner was found in possession of 312 bottles of prohibited foreign liquor. The detaining authority took into consideration thoroughly the investigation papers as placed before him and came to the conclusion that the petitioner was dealing in storing, selling and transporting prohibited foreign liquor and therefore the petitioner was bootlegger within the meaning of the PASA Act. The detaining authority also came to the conclusion that the activity of the petitioner was adversely affecting the public health and maintenance of public order. The detaining authority also came to the conclusion that the activities of the petitioner were required to be prevented forthwith and, therefore, after considering other measures which may be taken against the petitioner under the general law, as a last resort, the detaining authority passed the detention order of the petitioner which is under challenged in this petition.

3. Learned Advocate Ms.Bharatiben Rana for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

5. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the

detaining authority must rely upon credible and cogent material that the activities of the petitioner directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority must draw a clear line between the cases falling within breach of law and order and breach of public order.

6. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of DARPAN KUMAR SHARMA vs. STATE OF T.N. , as reported in (2003) 2 SCC 313 while dealing with solitary instance of robbery as ground for preventive detention, the Apex Court observed that nothing on record to show that the reach and potentiality of the incident was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Solitary instance of robbery held was not relevant for sustaining the order of detention and such incident hardly be said to disturb public peace or pubic order in jeopardy so as to bring the case within the purview of preventive detention.

7. In the present case, the detaining authority has taken into consideration the investigation papers in solitary case registered against the petitioner under the Bombay Prohibition Act. This case is registered against the petitioner because as per allegation he was found in possession of prohibited foreign liquor in breach of law. The petitioner may be tried and may be punished, if found guilty for such breach of law, but the filing of such case itself has no bearing on the question of maintenance of public order or public health. Surely, the act constituting the offence cannot be said to have affected the even tempo of the life of the community. The subjective satisfaction arrived at by the detaining authority therefore is not valid, legal and according to law. The order under challenge is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the Commissioner of Police, Surat City, on 21st of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu - Husein Majidsha Diwan is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS

permitted.

(J.R. VORA, J.)

p.n.nair